

tiffs, as assignees of the second mortgage, was between the latter, and Dawson and Norwood, the mortgagee themselves? would it be possible for them to defeat the right of the plaintiffs, upon the ground, that they, Dawson and Norwood, when they received the second mortgage, knew of the prior unrecorded one, and that they were guilty of a fraud upon themselves, in taking the second mortgage? It is impossible to suppose they could maintain such a position. By withholding the first mortgage from the record, and putting the second upon the record, they secreted the one, and published the other; and to suffer them afterwards to defeat rights, derived from themselves, founded upon the registered mortgage, by setting up the concealed one, would be to allow them to perpetrate a fraud. It is, I think, impossible such a principle can maintain in a court of equity, and if Dawson and Norwood could not set up the first mortgage, to the prejudice of the second, under such circumstances, I do not see how the trustees of Jones can; especially in reference to the notes of Hancock and Mann, which he received after the time limited for recording the mortgage, had run out.

But even if the second mortgage had been given to a third party, having actual notice of the prior unregistered one, still I think the *bona fide* assignee, without notice of such second mortgage, would not be affected with the notice to his assignor. It is said by the court in 8 *Cowen*, 264, to be "well settled, that if one affected with notice, convey to another without notice, the latter is as much protected, as if no notice had ever existed."

And Mr. Justice Story says, "if a person who has notice, sells to another who has no notice, and is a *bona fide* purchaser for a valuable consideration, the latter may protect his title, although it was protected with the equity arising from notice, in the hands of the person from whom he derived it."

This doctrine he says has been settled for nearly a century and a half. 1 *Story's Equity*, sections 409, 410.

It is said by the counsel for Winn and Ross, that these plaintiffs took the acceptances, subject to the several equities they were subject to in the hands of Dawson and Norwood,